

On the Cutting Edge: An Insider's Perspective

SURF Symposium Highlights Sustainability, Redevelopment Goals

Redevelopment proponents are gathering behind the "trinity of goals for brownfields," focusing on projects that are environmentally, economically, and socially sustainable, a brownfields lawyer told Bloomberg BNA Feb. 27.

"Success in all three goals is the trifecta of redevelopment," Richard Opper, a partner with the San Diego, Calif., law firm Opper & Varco, said. "To those of us who are advocates for smart growth, sustainability is our holy grail," Opper explained.

"For many years brownfield advocates have urged that brownfield redevelopment is an inherently sustainable process because it conserves the need to exploit new green space and other related resources. It is only recently, however, that attention has been focused on a different aspect of the sustainability of such projects—their remediation."

Addressing Remediation Gap

Remediation often can be included in project plans as an initial aspect of development, sometimes as an intrinsic part of the grading plan for future projects, Opper said. For too long remediation has not been considered sufficiently in project plans, and that still often is the case. Now, however, groups of scientists and consultants have formed to try to address this gap, he noted.

The Sustainable Remediation Forum (SURF) is one organization that has been gaining traction around the country. SURF holds quarterly meetings where consultants, regulators, and other project proponents gather to talk about their progress in spreading the word about how to adopt sustainable techniques to the business of remediating contaminated property. The 19th SURF forum was held in San Diego, Calif., Jan. 31-Feb. 2. Opper and Karin Holland of Haley & Aldrich co-organized and co-hosted the meeting.

"In my mind," Opper said, "there is an imperative for those of us who value sustainable practices

to develop a better approach to the remediation of property." Historically, though, there has been little guidance for those who believe in this approach. "SURF provides some methodological approaches to assessing the options for remediation and evaluating how to approach such projects with an eye towards sustainability."

The Sustainability Solutions Institute at the University of California, San Diego, also agreed to help host, underwrite, and participate in the event. "It was interesting how academic scientists who are studying impacts of contamination in international water bodies had knowledge that could positively impact local projects, but it wasn't at all clear that local regulators were aware of such knowledge being generated in their backyard," said Opper. "We clearly have a challenge in making sure that those who are thinking and writing about how to sustainably remediate land and water are heard by the regulators controlling how such activities occur."

The local regulatory community was not as well represented at the forum as Opper had hoped. "We were primarily interested in contributing to the conversation between the regulators and the regulated community about how to apply sustainability analysis to cleanups, but that conversation needs to have the regulators here in order to advance the ideas." Opper noted that U.S. EPA, which has shown a strong interest in sustainable redevelopment, was not able to send anyone to the forum. "The word from EPA was that the policy is in flux, and until it settles, regional regulators should sit tight and wait for the final federal guidance." Local regulators also were not in attendance to the degree the organizers had hoped.

Water Resolution 92-49

However, Opper said, Julie Chan, a state Regional Water Quality Control Board representative for the San Diego region, participated in a panel on a provoca-

tive theme focused on water quality and California's Resolution 92-49. Long known for its mandate that regulators not allow the degradation of water quality in California, Chan pointed out that elements of the resolution lent themselves to an analysis of whether a remedial plan could be considered "sustainable" or not.

Chan's thesis, Opper said, was that this existing resolution, adopted in 1992, can be applied to the more modern concerns of sustainability. Chan noted the language about cleanups included the requirement to clean up all water to background levels of contamination. However, if reaching background levels is technically or economically infeasible, the resolution instructs parties to reach the best water quality *reasonable* considering all demands on these waters, including "the total values involved, beneficial and detrimental, economic and social, tangible and intangible."

Institutional Controls

Opper also said it is clear the growing understanding of the importance of institutional controls has created new opportunities for sustainability. "Does it really make sense to dig up some dirty dirt and transport it, sometimes for hundreds of miles or more using diesel-burning trucks, only to dump it in someone else's backyard?"

Now that California agencies have created websites to account for the geographic presence of impacted or hazardous materials, "we can take better advantage of more options for management of the dirty dirt. Perhaps it can be safely left in place if it is not a danger to humans or their environment, and being able to note just what dirty dirt there is and where it has been left goes a long way to achieve these objectives," he said. "By taking advantage of these systems, we can take advantage of new ways to reduce and optimize the carbon footprint of our remedial projects."